

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DONNA JOHANSEN CROSS, *et al.*)

Plaintiffs,)

V.)

Civil Action No.: 1:12ev1455

PROSPECT MORTGAGE, LLC, *et al.*)

Defendants.)

MEMORANDUM IN SUPPORT OF
CONSENT MOTION FOR PROTECTIVE ORDER

Plaintiffs Donna Johansen Cross and David Cross (“Plaintiffs”) and Defendant Prospect Mortgage, LLC (“Prospect” and collectively, the “Parties”), by counsel, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, respectfully move this Court for entry of an Order enlarging the discovery deadline to August 30, 2013 for the sole purpose of allowing Plaintiffs to depose Prospect’s CEO, Ron Bergum, by telephone in the event the Parties fail to settle this case at a mediation scheduled for August 23, 2013. In support of their Consent Motion, the Parties state as follows:

1. This Court's Scheduling Order provides that discovery shall be concluded by August 9, 2013 unless enlarged by an order of the Court. (Dkt. # 33, ¶¶ 1, 10.)

2. Plaintiffs wish to depose Prospect's CEO, Ron Bergum, based on the fact that he met with Veronica Moskowitz (SVP of closing/post-closing operations) in June 2010 to discuss the fact that the Plaintiff Donna Johansen Cross obtained a residential mortgage loan from Prospect in March 2010 without an acceptable conditional loan approval from the USDA as the Parties had intended (the "Meeting").

3. At the Meeting, Mr. Bergum proposed to Ms. Moskowitz that Prospect apply Plaintiffs' \$7,956.00 USDA guarantee fee to their principal loan balance and refinance the loan under the FHA program.

4. Mr. Bergum has no independent recollection of the Meeting. He also had no follow-up discussions with Ms. Moskowitz regarding the subject loan after the Meeting.

5. Ms. Moskowitz has already testified about the Meeting as Prospect's Rule 30(b)(6) corporate representative.

6. Prospect requested a meet and confer with Plaintiffs to discuss the deposition of Mr. Bergum in light of his limited involvement with the subject loan and in light of the unique burden posed on Prospect in presenting its CEO for deposition. See Stewart v. EQ Industrial Services, Inc., 2012 U.S. Dist. LEXIS 3283, *10 (E.D.N.C. Jan. 11, 2012) ("courts have recognized specifically that in some instances depositions of high-level executives should be avoided or limited to minimize the potential burden on the corporation").

7. Based on the meet and confer, Plaintiffs agreed to take Mr. Bergum's deposition telephonically as permitted by Rule 30(b)(4) and to limit his deposition to two subject areas: (1) Mr. Bergum's reaction, including what he ordered or did not order, when he learned that the proposal he outlined at the Meeting did not occur; and (2) Mr. Bergum's reaction, including what he ordered or did not order, when he learned that Prospect had not paid interest on the USDA guaranty fee refund.

8. Plaintiffs further agreed to take Mr. Bergum's deposition only if the Parties failed to settle the case at their August 23, 2013 mediation and, in that event, to take his deposition no later than August 30, 2013; however, the Parties recognize that this aspect of their agreement requires Court approval.

9. Rule 26 provides this Court with broad authority to limit discovery and prescribe alternative discovery mechanisms. See Fed. R. Civ. P. 26(c)(1)(A)-(H).

10. Through the meet and confer process, the Parties have reached an agreement that balances their respective rights and concerns in this unique circumstance.

WHEREFORE, the Parties, by counsel, respectfully request entry of the attached Order enlarging the discovery deadline to August 30, 2013 to allow Plaintiffs to depose Mr. Bergum telephonically and limiting the deposition to the above-described subjects in the event the Parties fail to settle this case at their August 23, 2013 mediation. Alternatively, if the Court declines to enlarge the discovery deadline, then the Parties respectfully request entry of an order allowing Plaintiffs to depose Mr. Bergum telephonically and limiting the deposition to the above-described subjects.

Respectfully submitted,

PROSPECT MORTGAGE, LLC

DONNA JOHANSEN CROSS and
DAVID CROSS

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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